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In the

Supreme Court of the United States

OCTOBER TERM, 1947

No.....

INTERSTATE CIRCUIT, INC., a Corporation, TEXAS CONSOLIDATED THEATRES, INC., a Corporation, PARAMOUNT FILM DISTRIBUTING CORPORATION, a Corporation, LOEW'S INCORPORATED, a Corporation, RKO RADIO PICTURES, INC., a Corporation, WARNER BROTHERS PICTURES DISTRIBUTING CORPORATION, a Corporation, COLUMBIA PICTURES CORPORATION, a Corporation, UNITED ARTISTS CORPORATION, a Corporation, and UNIVERSAL FILM EXCHANGES, INC., a Corporation,

Petitioners,

v.

TIVOLI REALTY, INC.,

Respondent.

PETITION FOR WRIT OF CERTIORARI

To the Honorable Fred M. Vinson, Chief Justice, and Associate Justices of the Supreme Court of the United States:

Your petitioners, Interstate Circuit, Inc., Texas Consolidated Theatres, Inc., Paramount Film Distributing Corporation, Loew's, Incorporated, RKO Radio Pictures, Inc., Warner Brothers Pictures Distributing Corporation, Columbia Pictures Corporation, United Artists Corporation, and Universal Film Exchanges, Inc., respectfully

pray that a writ of certiorari may issue to the United States Circuit Court of Appeals for the Fifth Circuit to review a judgment of that court reversing an order of the United States District Court for the Northern District of Texas and dissolving a temporary injunction issued by that court against the prosecution by respondent, Tivoli Realty, Inc., of a suit brought by it in the United States District Court for the District of Delaware against petitioners and others, alleging a violation of the Anti-Trust Laws, a violation of a prior decree of the trial court below,* and seeking treble damages and equitable relief. The trial court had found that the prosecution by respondent, a Texas corporation doing business only in Dallas, Texas, of its action in Delaware would be oppressive, harassing, and inequitable. The decree of the Circuit Court of Appeals remanded the cause for further proceedings not inconsistent with the opinion of that court, but since its opinion held that as a matter of law no injunction could issue, the judgment of the Circuit Court of Appeals was tantamount to directing a dismissal of the action. No petition for rehearing has been filed.

JURISDICTION

The jurisdiction of this court is invoked under Section 240(a) of the Judicial Code, as amended, 28 U. S. C. Section 347(a).

OPINION BELOW

The judgment of the Circuit Court of Appeals was entered on March 18, 1948. (R. 102.) That court's opinion

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* This decree was entered in the case of **United States v. Interstate Circuit, Inc., et al., 20 F. Supp. 868**; it was affirmed by this court in 306 U. S. 208.

which has not yet been reported, appears in the Record at page 94. The opinion of the District Court appears in the Record at page 79. It is reported in 75 Fed. Supp. 93.

SUMMARY STATEMENT OF THE MATTER INVOLVED

Petitioners Interstate Circuit, Inc., and Texas Consolidated Theatres, Inc., filed this suit on December 8, 1947, in the United States District Court for the Northern District of Texas, Dallas Division, the residence of respondent, Tivoli Realty, Inc., and the site of these petitioners' principal place of business, seeking an injunction on the ground of *forum non conveniens* against the prosecution by respondent, Tivoli Realty, Inc., of an action instituted by it on November 6, 1947, in the United States District Court for the District of Delaware against Interstate Circuit, Inc., Texas Consolidated Theatres, Inc. and twelve producer or distributor defendants, claiming damages of $250,000.00 (to be trebled to $750,000.00) alleged to have accrued to Tivoli from a violation by defendants of the Federal Anti-Trust Laws, and requesting detailed and extensive injunctive relief set out in ten separate paragraphs in its prayer. (R. 15-41.)

In this Delaware suit it was alleged that ten of the fourteen defendants were corporations organized under the laws of Delaware, the remaining four under the laws of New York. (R. 16-20.) Of these ten, Interstate Circuit, Inc., and Texas Consolidated Theatres, Inc. (both Delaware corporations), were alleged to have their home offices

and principal places of business in Dallas, Texas; the others, places of business in New York City. The other four defendants (Paramount Pictures, Inc., Warner Bros. Pictures Distributing Corporation, Twentieth Century-Fox Film Corporation, Columbia Pictures Corporation) were alleged to be New York corporations with their respective principal places of business in New York City. (R. 16, 18, 19.) There were no allegations that any of these four was an "inhabitant" of or could be "found" or "transacts business" in Delaware. The petition on its face showed no venue over these defendants in the United States District Court for the District of Delaware. (R. 15.)

Seven of the twelve remaining defendants (Paramount Film Distributing Corporation, Loew's, Incorporated, RKO Radio Pictures, Inc., Warner Brothers Pictures Distributing Corporation, Columbia Pictures Corporation, United Artists Corporation, Universal Film Exchanges, Inc.) intervened in this action brought by Interstate and Texas Consolidated (R. 42), and the remaining five defendants (Paramount Pictures, Inc., Radio Keith Orpheum Corporation, Warner Bros. Pictures, Inc., Universal Pictures Company, Inc., Twentieth Century-Fox Film Corporation) filed in open court their written agreement, on account of the expense, harassment, and inconvenience of the trial of respondent's action in Delaware, to submit to the venue of the court below on the cause of action asserted in the Delaware complaint. (R. 59.)

Respondent, Tivoli Realty, Inc., was a corporation organized under the laws of Texas early in 1946 by I. B.

Adelman, his wife, and Harry Sachs, while Adelman and Sachs were (and had been for ten years and longer), respectively, the partner and associate, and confidential employee, of petitioner Interstate Circuit, Inc. (R. 10, 74, 79.) Tivoli began operation of its only theatre, which is in a residential section of Dallas, Texas, about September 26, 1947. (R. 23.) It filed its Delaware action 41 days later, on November 6, 1947. (R. 2.)

Respondent filed motions to dismiss the petition and the intervention. (R. 55, 57.) On December 22, 1947, the trial court heard the matter on the sworn complaint, the intervention sworn to by representatives of the seven interveners, the agreement to venue stated and presented in open court, and an affidavit by respondent's President filed on the day of the hearing. (R. 60.)

The court found, upon the evidence submitted, among other facts, the following:

That neither Interstate nor Texas Consolidated has other than a statutory office in Delaware and transacts no business there, practically all their operations being in Texas. (R. 74.)

That respondent transacts all its business in Dallas, Texas, where its directors, officers, and stockholders reside. (R. 74.)

That the charges made by respondent in its Delaware suit are so multifarious and general that a proper defense would require the constant attendance at the trial of many executive officers and key employees of all petitioners, as

well as the subsidiaries of the other Delaware defendants, together with contracts, bookings, correspondence, and other documentary evidence covering a period of some ten years. (R. 75.)

That the absence of such officers and employees and the removal of such records would impose a heavy financial burden on petitioners and would seriously interfere with the operation of theatres by Interstate and Texas Consolidated and by independent operators served by the Dallas exchanges of distributor petitioners. (R. 75.)

That the comparative merits of the theatres involved, could best be determined by trial in the district court where the theatres are located. (R. 75.)

That the prosecution of the Delaware cause would and does constitute an inequitable, oppressive, harassing, and vexatious suit against the petitioners. (R. 75.)

That the prosecution of the Delaware cause would be more expensive and inconvenient to respondent than a prosecution of the cause in the Texas forum. (R. 75, 76.)

That the administration of the injunctive relief prayed for in the Delaware cause would impose on the court granting it the burden of supervising the internal affairs of Interstate and Texas Consolidated. (R. 76.)

That it would be impractical for the Delaware court to discharge this burden of supervision because of its remoteness from the scene. (R. 76.)

That those defendants in the Delaware cause who had not joined in the present suit had agreed in writing to venue in the court below. (R. 76.)

That at all times each such non-intervening defendant had a subsidiary doing business in Texas, liable to suit, and that respondent could have obtained in the Texas court any relief to which entitled with much less expense and inconvenience to itself than would have resulted from a prosecution of the Delaware cause. (R. 76.)

The court in its conclusion of law found that it was the most convenient forum for the interpretation and enforcement of its decree in *United States v. Interstate Circuit, Inc., 20 F. Supp. 868*, and for the protection of the rights and interests of all parties affected thereby, including respondent and the public.

Upon these findings and this conclusion the court issued its temporary injunction against further prosecution by respondent of its Delaware action.

The Circuit Court of Appeals, in reversing the trial court and dissolving the injunction, rejected material findings of fact made by the trial court, in effect held that the court below on grounds of comity had no power to issue the injunction, and decided that the venue provision of the Clayton Act constituted a special venue statute creating an absolute and indefeasible right in respondent to choose its forum without regard to attendant equitable circumstances.

QUESTIONS PRESENTED

1. Do the venue provisions of the Clayton Act, create an absolute and indefeasible right in a litigant to choose his forum without regard to equitable considerations? This

same question is involved in Cause No. 544, *United States v. National City Lines*, now pending in this court, and set for argument for the week of April 26, 1948.

2. Does a Federal District Court have the power to enjoin a person within its jurisdiction from prosecuting an oppressive, harassing, and inequitable suit in a distant Federal District Court?

3. Is a corporation as a matter of law deprived of the right to invoke the doctrine of *forum non conveniens* to enable it to avoid an oppressive, harassing, and vexatious suit pending in the state of its incorporation, in which it maintains only a statutory office and transacts no business, where it appears that it has lived its life, maintained its offices, and transacted all of its business in the state in which the plaintiff resides and conducts its business?

4. Can a reviewing court ignore or disregard the findings of fact, based on competent evidence, made by the trial court from which the appeal was taken?

REASONS FOR GRANTING THE WRIT

The discretionary power of this court to grant a writ of certiorari is invoked upon the following grounds:

1. The Circuit Court of Appeals held that it was error for one federal district court to enjoin a person from prosecuting a suit in another federal district court because the federal district courts are within a single judicial system in which the error of one may be corrected by the ordinary processes of appeal to the United States Supreme Court.

This is in conflict with the decision of this court in *Steelman v. All Continent Corporation, 301 U. S. 278.*

2. The decision of the Circuit Court of Appeals that the special venue provision of the Clayton Act prevents the application of the doctrine of *forum non conveniens* to suits brought under that Act is upon an important question of federal law which has not been, but should be, settled by this court.

3. The substitution by the Circuit Court of Appeals of its own inferences and conclusions (contrary to the overwhelming weight of the evidence) for the findings of fact of the trial court, supported by the evidence, on the questions of the convenience of a forum and the expense and harassment entailed in the trial of the action in Delaware as compared to Texas, is in direct conflict with the decisions of this court in *McCaughn v. Real Estate Land Title & Trust Company, 297 U. S. 606*, and *United States v. Jefferson Electric Mfg. Co., 291 U. S. 386*, and has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this court's power of supervision.

4. The decision of the Circuit Court of Appeals that the facts did not justify, the application of the doctrine of *forum non conveniens* is in conflict with the decisions of this court in *Gulf Oil Corporation v. Gilbert, 330 U. S. 501; Koster v. Lumbermen's Mutual Casualty Company, 330 U. S. 518*, and *Rogers v. Guaranty Trust Company, 288 U. S. 123.*

WHEREFORE, it is respectfully submitted that this petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit should be granted.

Respectfully submitted,

GEORGE S. WRIGHT,
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Attorneys for Petitioners.

In the

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No.....

INTERSTATE CIRCUIT, INC., a Corporation, TEXAS CONSOLIDATED THEATRES, INC., a Corporation, PARAMOUNT FILM DISTRIBUTING CORPORATION, a Corporation, LOEW'S INCORPORATED, a Corporation, RKO RADIO PICTURES, INC., a Corporation, WARNER BROTHERS PICTURES DISTRIBUTING CORPORATION, a Corporation, COLUMBIA PICTURES CORPORATION, a Corporation, UNITED ARTISTS CORPORATION, a Corporation, and UNIVERSAL FILM EXCHANGES, INC., a Corporation,

Petitioners,

v.

TIVOLI REALTY, INC.,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

STATEMENT OF THE CASE

The essential facts have been stated in the accompanying petition for writ of certiorari.

JURISDICTION

The jurisdiction of this court is shown in the accompanying petition.

OPINION BELOW

The opinion of the Circuit Court of Appeals is found at page 94 of the Record. The decision of the trial court is found at page 79 of the Record, and also is reported in 75 Fed. Supp. 93.

SPECIFICATION OF ERRORS

Petitioners urge that the Circuit Court of Appeals for the Fifth Circuit erred:

1. In holding that the trial court erred in enjoining the prosecution of respondent's cause in another federal court.

2. In holding that the venue section of the Clayton Act prevents the application of the doctrine of *forum non conveniens*.

3. In holding that the facts presented to the trial court did not justify the issuance of a temporary injunction.

4. In ignoring and disregarding the findings of fact made by the trial court and supported by the overwhelming evidence.

5. In finding, contrary to the evidence and the trial court's finding, that it was not vexatious nor oppressive to sue a defendant in the state of its incorporation when it has lived its life elsewhere.

ARGUMENT

I.

The holding of the Circuit Court of Appeals that it was error for one Federal District Court to enjoin the prose-

cution of a suit in another Federal District Court because the Federal District Courts are within a single judicial system in which the error of one may be corrected by the ordinary processes of appeal to the United States Supreme Court, is in conflict with a decision of this court.

In any case in which a District Court has jurisdiction of the parties, it has inherent and historic powers of courts of equity and may issue writs of injunction restraining persons subject to its jurisdiction from committing any illegal or vexatious act. This jurisdiction is buttressed by Paragraph 262 of the Judicial Code, 28 U. S. C., 377.

Notwithstanding this historic rule, the Circuit Court of Appeals has held that a District Court in Texas may not enjoin a Texas citizen from prosecuting a vexatious suit in the District Court of Delaware, because the Federal courts are a part of one system and any error committed by one court may be corrected on appeal. This miscontrues the basis upon which the court below proceeded against the respondent in restraining it from exercising a legal right in an inequitable manner. It is in conflict with the holding of this court in *Steelman v. All Continent Corporation, 301 U. S. 278*, wherein the Supreme Court *reinstated* a U. S. District Court decree enjoining the prosecution of a suit in another federal court because the equities demanded it. Mr. Justice Cardozo said:

> "The argument misconceives the grounds upon which the trustee looks to us for aid. The trustee does not challenge the jurisdiction of the federal court in its strict and proper sense. He is not seeking a writ of prohibition directed to the court itself. He is not seek-

> ing an injunction to vindicate his exclusive control over a res in his possession, or in the possession, actual or constructive, of the court that appointed him. *What he seeks is an injunction directed to a suitor and not to any court, upon the ground that the suitor is misusing a jurisdiction which by hypothesis exists, and converting it by such misuse into an instrument of wrong.*" (Italics added.)

In *Baltimore & Ohio R. Company v. Kepner, 314 U. S. 44*, the court stated:

> "The real contention of petitioner is that despite the admitted venue respondent is acting in a vexatious and inequitable manner in maintaining the federal court suit in a distant jurisdiction when a convenient and suitable forum is at respondent's doorstep. Under such circumstances petitioner asserts power, abstractly speaking, in the Ohio court to prevent a resident under its jurisdiction from doing inequity. *Such power does exist.*" (Italics added.)

Mr. Justice Frankfurter in his dissent also recognized "the historic power of courts of equity to prevent a misuse of litigation by enjoining resort to vexatious and oppressive foreign suits." Such statements were made in a case where a state court had enjoined the prosecution of a suit in a federal court, but surely the power of a federal court to grant equitable relief is no less extensive than that of a state court. As said in *American Jurisprudence, Vol. 28, page 389:*

> "Although equity courts, like other tribunals, act within the territorial limits of the state which creates them and cannot extend their jurisdiction to other sovereignties, their power to grant relief by restraining the bringing or prosecution of judicial proceedings in other states or countries has never, except in very

> early cases, been questioned. It is in fact the settled rule, supported by all the authorities, that a court of equity in one state may and, in a proper case, will restrain its own citizens, or other persons within the control of its process, from prosecuting actions or proceedings in other states or in foreign countries."

In *Moore's Federal Practice, Section 3.05, page 237*, it is said:

> "A federal court will enjoin the prosecution of a second action in personam in another federal court where it is inequitable for the party to proceed in the second court."

Under the present decision one federal court would be powerless to restrain the prosecution of an action in another federal court, regardless of the circumstances existing, simply because both courts are parts of the same judicial system. Such a result cannot be. We submit that this case calls for the exercise of the supervisory powers of this court.

Moreover, to the extent that the Delaware action involved a claim of right under the decree entered by the District Court in Texas in *U. S. v. Interstate Circuit, Inc., et al., 20 F. Supp. 868*, it is clear that the District Court in Dallas had authority to issue an injunction to protect its own jurisdiction first acquired. *Continental Illinois National Bank & Trust Co. v. Chicago Rock Island & Pacific Railroad, 294 U. S. 648, 675; Crosley Corporation v. Hazelton Corporation, 122 Fed. (2d) 925; C. C. A. 3, In re Georgia Power Company, 89 Fed. (2d) 218. (Certiorari denied, 302 U. S. page 692.)*

II.

In the decision of the Circuit Court of Appeals to the effect that the language of the venue section of the Clayton Act prevents the application of the doctrine of forum non conveniens to suits brought under that Act, there is presented an important question of Federal law which has not been, but should be, settled by this court.

In *Baltimore & Ohio Railway Company v. Kepner, 314 U. S. 44* and *Miles v. Illinois Central Railroad, 315 U. S. 698*, this court held that in the particular venue section of the Federal Employers' Liability Act there was evidenced a Congressional intent that a plaintiff suing under that Act could not be restrained under the principles of *forum non conveniens* in the choice of his forum.

The Circuit Court of Appeals has held that there is no distinction in this respect between the venue provision of the Clayton Act and that of the Federal Employers' Liability Act. There is now pending in this court an appeal from the decision of Judge Yankwich of the Southern District of California in *United States v. National City Lines, 7 F. R. D. 338*, wherein the court concluded that he had discretion to apply the doctrine of *forum non conveniens* to a civil suit brought by the United States under the Anti-Trust Laws.

The Anti-Trust Laws are important legislation. Many suits, involving large sums of money, are brought pursuant to their provisions. Whether venue may be laid in actions of that nature without regard to the equitable principles of the doctrine of *forum non conveniens* is an important ques-

tion of federal law, which should be settled by the courts. We urge that a writ of certiorari should be granted in the instant proceeding, involving a suit by an individual, since the same question, where the United States is plaintiff, is presented in the *National City Lines case.*

III.

The decision of the Circuit Court of Appeals in substituting its own inferences and conclusions for the findings of fact of the trial court, which were supported by the evidence, on questions of convenience of a forum and the expense and harassment entailed in the trial of the action in Delaware as compared to Texas, is in direct conflict with the decisions of this court, and has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this court's power of supervision.

The Circuit Court of Appeals holds that Delaware is not an inconvenient forum; that it is the only forum available to respondent in an action against all of those it wishes to sue; that venue over all of them is available in Delaware; that trial in Texas would be more costly than in Delaware or New York; and that the necessary witnesses in the main would come from New York.

In each respect these holdings are contrary to the direct findings of the trial court, which are supported by the evidence. The reviewing court disregarded the trial court's findings and substituted its own. This is in direct conflict with many decisions of this court, e. g., *McCaughn v. Real*

Estate Land Title & Trust Company, 297 U. S. 606; United States v. Jefferson Electric Mfg. Co., 291 U. S. 386.

IV.

The decision of the Circuit Court of Appeals that the facts did not justify the application of the doctrine of forum non conveniens is in conflict with the decisions of this court.

This court has recently accepted and enunciated the doctrine of *forum non conveniens* to the effect that a court may resist imposition of jurisdiction which it admittedly possesses where circumstances as to the availability of witnesses, the ease of access to proof, the value of a view of the premises, the public interest involved, and other such factors strongly indicate the justice and desirability of a trial in another jurisdiction. *Gulf Oil Corporation v. Gilbert, 330 U. S. 501; Koster v. Lumbermen's Mutual Casualty Company, 330 U. S. 518.* At an earlier date this court had held that jurisdiction would be declined where there was involved detailed and continuing supervision of the affairs of a foreign corporation. *Rogers v. Guaranty Trust Company, 288 U. S. 123.*

The findings of the trial court in the instant case, supported by the evidence, brought petitioners' suit within the scope of both principles.

It is urged that the decision of the Circuit Court of Appeals is in conflict with the cited decisions of this court, and that the situation is such as to afford a proper occasion for the exercise of the supervisory power of this court.

CONCLUSION

The ruling of the Circuit Court of Appeals is erroneous. The questions presented are of great public interest. In its decision of such questions the Circuit Court of Appeals is in conflict with the applicable decisions of this court. It is therefore respectfully submitted that this petition for writ of certiorari should be granted.

Respectfully submitted,

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AUTHORITIES.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.

No. 729.

INTERSTATE CIRCUIT, INC., a Corporation, TEXAS CONSOLIDATED THEATRES, INC., a Corporation, PARAMOUNT FILM DISTRIBUTING CORPORATION, a Corporation, LOEW'S INCORPORATED, a Corporation, RKO RADIO PICTURES, INC., a Corporation, WARNER BROTHERS PICTURES DISTRIBUTING CORPORATION, a Corporation, COLUMBIA PICTURES CORPORATION, a Corporation, UNITED ARTISTS CORPORATION, a Corporation, and UNIVERSAL FILM EXCHANGES, INC., a Corporation,

Petitioners,

v.

TIVOLI REALTY, INC.,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Statement.

On November 6, 1947, Tivoli Realty, Inc., a Texas Corporation which owns and operates a motion picture theatre in Dallas, Texas, filed in the United States District Court for the District of Delaware an action under the Federal Antitrust laws against fourteen corporate defendants. (R. 15-41). Twelve of the fourteen defendants are the major

producers and distributors of motion pictures in the United States. Two are theatre chains operating in the State of Texas and environs. (R. 16-21).

Tivoli filed suit in Delaware for the reason that jurisdiction and venue pursuant to Section 12 of the Clayton Act (15 U. S. C. A. 22) could be obtained in that district with respect to at least thirteen of the fourteen defendants. Venue with respect to only one, Paramount Pictures, Inc., was considered doubtful (R. 62). There is no other district in which venue over this entire group of defendants could be secured (R. 66).

Of the fourteen defendants, ten are incorporated in the State of Delaware. These ten are:

Paramount Film Distributing Corporation
Loew's Incorporated
Radio-Keith-Orpheum Corporation
RKO Radio Pictures, Inc.
Warner Bros. Pictures, Inc.
United Artists Corporation
Universal Pictures Company, Inc.
Universal Film Exchanges, Inc.
Interstate Circuit, Inc.
Texas Consolidated Theatres, Inc.

(R. 66-7)

Three of the remaining four defendants are New York corporations, but they directly license and distribute pictures in Delaware. These three are:

Twentieth-Century Fox Film Corporation
Warner Bros. Pictures Distributing Corporation
Columbia Pictures Corporation

(R. 67)

Suit was not instituted in Texas for the reason that venue with respect to six of the defendants was considered improper or dubious (R. 66). Five of these six defendants denied that they are subject to the venue of the courts in Texas, in a statement filed in the District Court below (R.

59). These five are principals in the conspiracy which plaintiff alleges in its Delaware action (R. 68-69). They did not join or intervene in petitioner's suit below and are not parties to this petition.

Petitioners filed this suit on December 8, 1947, in the United States District Court for the Northern District of Texas seeking an injunction on the ground of *forum non conveniens* against Tivoli Realty, Inc., from proceeding with its Delaware action (R. 1).

The trial court, after a hearing on an order to show cause why preliminary injunction should not issue, granted a temporary injunction preventing Tivoli from further prosecution of its Delaware action (R. 74, 79).

An appeal was taken to the Circuit Court of Appeals for the Fifth Circuit. That Court reversed the trial court and ordered the injunction dissolved (R. 93, 99). Petitioners moved the Circuit Court of Appeals for a stay of the issuance of mandate. This motion was denied by an order filed April 5, 1948. Thereafter petitioners made applications to this Court for orders staying the mandate of the Circuit Court of Appeals. These were denied by Mr. Justice Black and the Chief Justice on April 6 and April 8, 1948, respectively.

Opinion of the Court Below.

The Circuit Court of Appeals based its decision on various alternative grounds, none of which warrants review by the Supreme Court of the United States.

1. The record revealed to the Court certain facts which of themselves rendered the doctrine of *forum non conveniens* inapplicable.

(a) The plaintiff, Tivoli, in bringing its Delaware action did not have a choice of forums between Texas and Delaware. Only in Delaware could Tivoli have secured venue with respect to the defendants necessary to its cause of action. There being only one appropriate forum, the doctrine of *forum non conveniens,* could not apply. Relying upon

statements by this Court hereinafter cited, the court below said,

> "At least two such forums must be open to the plaintiff before the doctrine comes into play; and they shall not be dependent merely upon the will or grace of the defendant, but must be provided by law." (Opinion of the Court, R. 95)

(b) Tivoli's Delaware action alleges a nationwide conspiracy in the distribution of motion pictures (R. 15-41). The principal actors in the alleged conspiracy, who are necessary witnesses, are located in New York City, New York, closer to Delaware than Texas by many hundreds of miles (R. 62-64). The court, in view of this fact, ruled that Delaware presented a more convenient forum.

(c) The plaintiff in the Delaware action did not search out a forum which would be harassing and vexatious, but brought its suit in the state of incorporation—the legal domicile of the major defendants—which was the only district in which venue could be secured with respect to the participants in the conspiracy.

2. The second main ground for the Circuit Court's opinion was a recognized principle of comity, namely that

> "United States district courts are not inclined to interfere by injunction with suits in other federal districts where the inequity alleged is based solely on inconvenience (citing Baltimore and Ohio R. Co. v. Kepner, 314 U. S. 44, 53)". (Opinion of the Court, R. 95)

3. The court also held that the venue statute, Section 12 of the Clayton Act (15 U. S. C. A. 22), under which Tivoli brought its Delaware action, precluded application of the doctrine of *forum non conveniens* (Opinion of the Court, R. 97-99).

Reasons for Denying the Petition for Writ of Certiorari.

Respondent contends that the Petition for Writ of Certiorari should be denied for the following reasons:

1. The decision below is based upon alternative grounds, all of which are sound, and any one of which would require affirmance by this Court.

2. The decision below presents no conflict with any decision of this Court or with any other Circuit. The case of *Steelman* v. *All Continent Corporation,* 301 U. S. 278, cited by petitioners is, as we shall discuss, completely irrelevant.

3. The decision below does not present for determination any important question of federal law, because certain of the alternative grounds upon which it is based depend upon the peculiar facts of the case. Others—such as the absence of alternative forums and the principle of comity—rest upon recent pronouncements by this Court.

4. One of the bases of the decision below is purely factual, presenting no question of law for the decision of this Court.

5. Although it is true that this Court has never ruled on the question of whether or not the special venue provision of the Clayton Act prevents the application of the doctrine of *forum non conveniens,* the holding of the Circuit Court of Appeals on this subject was not the only basis for decision. This Court now has before it a case in which this question will be settled, *United States* v. *National City Lines,* No. 544, argued during the week of April 26, 1948. Presumably, the *National City Lines* case will have been decided before this case could be decided.

ARGUMENT.

I. The Action of the Circuit Court of Appeals in Dissolving the Temporary Injunction Issued Below on the Facts Was Proper.

1. The holding of the Circuit Court of Appeals that the doctrine of *forum non conveniens* may not apply unless a plaintiff has a choice of at least two forums in which he may properly institute suit is in strict conformity with the latest holdings of the United States Supreme Court on this subject.

Mr. Justice Jackson said in *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501 at 506-7:

> "In all cases in which the doctrine of forum non conveniens comes into play, it presupposes at least two forums in which the defendant is amenable to process; the doctrine furnishes criteria for choice between them."

The record establishes the fact that Tivoli did not have such a choice. There was no forum except Delaware in which it could properly file suit. The statement filed in the district court by five of the principal defendants in Tivoli's Delaware action admits this to be a fact (R. 59). It is submitted that the decision of the Court below would have conflicted with the *Gulf* case only if it had ruled in favor of petitioners rather than for respondent regardless of the other factors involved.

2. The Court below also held,

> "We agree with Tivoli that the trial in Texas would be more costly than in either Delaware or New York, because the alleged conspiracy is nationwide and the necessary witnesses, in the main, would have to be brought to Texas from New York, which is much closer to Delaware than is Texas." (R. 97)

This statement receives overwhelming support from the record (R. 62-64).

When trial is less costly and more convenient in the forum in which a plaintiff institutes suit, *forum non conveniens* may not apply to defeat jurisdiction. This is the rule as established by this Court. *Gulf Oil Corp.* v. *Gilbert,* 330 U. S. 501; *Koster* v. *Lumbermen's Mutual Casualty Company,* 330 U. S. 518; *Rogers* v. *Guaranty Trust Company,* 288 U. S. 123.

3. The court below further held that the institution by Tivoli of suit, not in some arbitrarily selected forum, but at the very domicile of ten of the fourteen defendants, did not justify application of the doctrine of *forum non conveniens.* This holding is in accord with *Crosley Corp.* v. *Hazeltine Corp.,* 122 F. (2d) 925 (C. C. A. 3, 1941). See also *Hoffman* v. *Foraker,* 274 U. S. 21.

II. The Doctrine of Comity Supporting the Holding of the Circuit Court of Appeals is in Accordance With Decisions of the United States Supreme Court.

Petitioners state that the Circuit Court of Appeals erred in holding that one United States district court should not as a matter of comity restrain a plaintiff on grounds of *forum non conveniens* from proceeding with an action in which jurisdiction has previously been properly acquired in another United States district court.

Petitioner's argument appears to be based upon a misunderstanding of the doctrine of comity. Comity does not raise the question of the power of the district court. The question is whether this power may be exercised.

In both *Baltimore and Ohio Ry.* v. *Kepner,* 314 U. S. 44, and *Gulf Oil Corp.* v. *Gilbert,* 330 U. S. 501, this Court has said that one United States district court should not exercise its equity powers to restrain prosecution in another United States district court on the ground of convenience. As Mr. Justice Jackson stated in the *Gulf Oil* case, at 508, the doctrine of *forum non conveniens* is left to the

> "* * * discretion of the court *to which plaintiff resorts* * * *" (Italics added).

In the *Kepner* case, this Court said, at 53,

> "But the federal courts have felt they could not interfere with suits in far federal districts where the inequity alleged was based only on inconvenience."

The *Steelman* case in no way conflicts with these holdings. In that case the question was whether the United States District Court for the District of New Jersey acted properly in protecting *its previously acquired* jurisdiction in a bankruptcy proceeding by enjoining a party from proceeding with subsequent litigation in another district court concerning the bankrupt estate. Mr. Justice Cardozo, citing *Continental Illinois Nat. Bank & Trust Co. of Chicago* v. *Chicago, R. I. & P. Ry. Co.*, 294 U. S. 648, stated that the Court's equity powers are properly exercised

> "to issue an injunction when necessary to prevent the defeat or impairment of *its* jurisdiction . . . " (at 289) (Italics added).

This holding in no way conflicts with the case at bar. Jurisdiction over the present cause had been first obtained by the Delaware court—not by the Texas court. And this Court's opinion in *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501, makes it very clear that the proper tribunal in which to apply for relief on the ground of *forum non conveniens* is the Delaware court.

It is unnecessary to elaborate the obvious point: That unless the administration of *forum non conveniens* is confined to the courts in which the original proceedings are filed, great confusion and conflict will inevitably result.

III. The Court Below Properly Held That Forum Non Conveniens is Not Applicable to Proceedings Under Section 12 of the Clayton Act. That Issue is Before This Court in Another Proceeding.

This issue is before this Court in *United States* v. *National City Lines*, No. 544, which was argued in the week of April 26.

We submit, however, that the holding below is clearly proper. In enacting Section 12 of the Clayton Act, Congress deliberately enlarged and specified venue for antitrust actions. This was done to facilitate the execution of the vital national policy reflected in the antitrust laws. The courts should not infringe upon the Congressional prescription, nor impair the application of the antitrust laws, by subjecting suits brought under them to the hazards and delays of *forum non conveniens*.

CONCLUSION.

We respectfully urge, for the reasons stated, that the petition for certiorari be denied.

Respectfully submitted,

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